

ENTERED

January 30, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

EDDIE MARLOW,
(SPN #01226099)

Plaintiff,

vs.

GILBERT RODRIGUEZ,

Defendant.

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CIVIL ACTION H-19-0282

MEMORANDUM AND OPINION

Eddie Marlow, an inmate of the Harris County Jail, sued in January 2019, alleging civil rights violations resulting from a denial of due process. Marlow, proceeding pro se and in forma pauperis, sues Gilbert Rodriguez, his court-appointed attorney. The threshold issue is whether Marlow's claims are barred by the doctrine of res judicata.

I. Plaintiff's Allegations

Marlow asserts that his court-appointed counsel, Rodriguez, rendered ineffective assistance during his on-going state criminal proceedings. Marlow states that his ex-girlfriend falsely accused Marlow of assaulting her at a gas station in September 2018. Marlow claims that Rodriguez reviewed the video surveillance from the gas station, which did not contain any evidence of the assault. Marlow argues that Rodriguez failed to seek dismissal of the criminal charges against him. Marlow seeks \$100,000.00 in compensatory damages.

II. Standard of Review

A federal court has the authority to dismiss an action in which the plaintiff is proceeding in

forma pauperis before service if the court determines that the action is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(I). A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001) (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998) (quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

III. Discussion

Marlow raised virtually identical claims against the same defendant in Civil Action No. H-18-4857. On January 8, 2019, this Court dismissed Marlow’s claims as frivolous and for failure to state a claim. This Court noted that the dismissal counted as a strike for purposes of the three strikes provision of 28 U.S.C. § 1915(g).

In forma pauperis complaints may be dismissed as frivolous if they seek to re-litigate claims that assert substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the plaintiff. *Wilson v. Lynaugh*, 878 F.2d 846, 849 (5th Cir.), *cert. denied*, 493 U.S. 969 (1989). Pauper status does not entitle a plaintiff to avoid the ordinary rules of res judicata. *Id.* A district court may dismiss as malicious a pauper’s complaint that duplicates allegations of another pending federal lawsuit filed by the same plaintiff. *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993).

Marlow filed the instant case fifteen days after H-18-4857 was dismissed. The claims in the above-styled action will be DISMISSED as malicious because they are duplicative of claims previously adjudicated by the Court.

IV. Conclusion

The action filed by Eddie Marlow (SPN Inmate #01226099) is DISMISSED as malicious because the claims are duplicative of those previously adjudicated. His claims are DISMISSED with prejudice under 28 U.S.C. § 1915(e)(2)(B)(I).


The agency having custody of Marlow must continue to deduct twenty percent of each deposit made to Marlow's inmate trust account and forward payments to the court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) Thomas Katz, Manager of the Inmate Trust Fund, 1200 Baker Street, Houston, Texas 77002, Fax 713-755-4546; and

(2) the Manager of the Three-Strikes List for the Southern District of Texas at: Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on January 30, 2019.


VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE